

March 3, 1987

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL  
RECENT LITIGATION

PENN, et al. v. CITY OF SAN DIEGO, et al.

Plaintiff, the owner of a card room in the City of San Diego, sued the City seeking to have the card room price regulation ordinance, Municipal Code Section 33.3917, held invalid. Summary judgment was granted in favor of the City in the trial court and the Court of Appeal has upheld that ruling.

FACTS

Since 1946, the City has regulated the price that may be charged by a card room for the playing of card games at the tables. In 1976 the rate was set at \$2.50 per player per hour. In 1979 the City Manager recommended that the rate be set at \$5.00 but the full City Council took no action on the proposal. In 1983, the ordinance was amended to provide for the phase out of card rooms. The \$2.50 charge was maintained, however, during the phase out.

Plaintiff, Stanley Penn, is the owner of the Lucky Lady Card Room on El Cajon Boulevard. Plaintiff contended that the \$2.50 maximum hourly charge was, in relevant part, an unconstitutional exercise of the police power, because it bore no rational relationship to the purpose of the ordinance, and the ordinance unlawfully restrained trade under the California Cartwright Act.

LITIGATION

The trial court ruled in favor of the City on all counts in the original complaint. Plaintiff appealed that decision but argued only those issues outlined above. The Court of Appeal upheld the decision of the trial court that the setting of a maximum price for playing at the tables was lawful. The court held that the regulation was a valid exercise of the police power because the effect of the regulation was to decrease the number

of card rooms and thus was rationally related to the purpose of the ordinance. The court also held that the City was not a "person" within the meaning of the Cartwright Act and thus not subject to its provisions. The regulation was, therefore, not an unlawful restraint of trade.

The opinion of the Court of Appeal is now final and no further review has been sought by plaintiff. Deputy City

Attorney Leslie J. Girard handled the case in the trial court and wrote the briefs on appeal. Deputy City Attorney Steven R. Gustavson argued the case before the Court of Appeal.

Respectfully submitted,

JOHN W. WITT

City Attorney

LJG:vtc:Lit.(x043.1)

Enclosure

RC-87-10